



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 18 1994

REPLY TO THE ATTENTION OF:

HSE-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Mark V. Stanga
Environmental Affairs Counsel
Litton Systems, Inc.
1725 Jefferson Davis Highway
Suite 601, Crystal Square Two
Arlington, Virginia 22202-3585

Re: Lake Salvage Site
Chicago, Illinois

Dear Mr. Stanga:

Enclosed please find an executed copy of the Administrative Order by Consent issued for this site pursuant to Sections 106 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9606 and 9622. Thank you for your cooperation in this matter.

If you have any questions regarding this Order, please contact Thomas Krueger, Assistant Regional Counsel, at (312) 886-0562 or Fred Bartman, On-Scene Coordinator, at (312) 886-0776.

Sincerely yours,

William E. Muno, Director
Waste Management Division

Enclosure

cc: Gary King, Deputy Manager
Division of Land Pollution Control
Illinois Environmental Protection Agency

bcc: Docket Analyst, ORC (CS-29A)
Thomas Krueger, ORC (CS-29A)
Fred Bartman, (HSE-5J)
Carol Graszer Ropski, ESS (HSE-5J)
Jose Cisneros, ESS (HSE-5J)
Mary Ellen Ryan, SFAS (MF-10J)
Oliver Warnsley, CRS (HSM-5J)
EERB Site File
EERB Read File
Toni Lesser, Public Affairs (P-19J) w/out attachments
Don Henne, Department of Interior

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

V-W- '94-C-256

IN THE MATTER OF:	)	Docket No.
)	
LAKE SALVAGE SITE	)	ADMINISTRATIVE ORDER BY
	)	CONSENT PURSUANT TO
	)	SECTION 106 OF THE
	)	COMPREHENSIVE
Respondent:	)	ENVIRONMENTAL RESPONSE,
	)	COMPENSATION, AND
LITTON SYSTEMS, INC.	)	LIABILITY ACT OF 1980,
	)	as amended, 42 U.S.C.
	)	§ 9606(a)
)	

I. JURISDICTION AND GENERAL PROVISIONS

This Order is entered voluntarily by the United States Environmental Protection Agency ("EPA") and the Respondent. The Order is issued pursuant to the authority vested in the President of the United States by Sections 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606(a), 9607 and 9622. This authority has been delegated to the Administrator of the EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D, and to the Director, Waste Management Division, Region V, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

This Order provides for performance of removal actions and reimbursement of response costs incurred by the United States in connection with property located at Lake Salvage, 2527-29 West Lake Street, Chicago Illinois (the "Lake Salvage Site" or the "Site"). This Order requires the Respondent to conduct removal actions described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

A copy of this Order will also be provided to the State of Illinois, which has been notified of the issuance of this order pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

Respondent's participation in this Order shall not constitute an admission of liability or of EPA's findings or determinations contained in this Order except in a proceeding to enforce the terms of this Order. Further, Respondent does not admit and retains the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Order, the findings or determinations contained in this Order. Respondent agrees to comply with and be bound by the terms of this Order. Respondent

further agrees that it will not contest the basis or validity of this Order or its terms.

This Order is executed by the Parties in good faith to avoid the expense and delay of potential litigation over the matters addressed by this Order.

In entering into this Order, Respondent's objectives include reducing, pursuant to CERCLA section 122(g)(5), 42 U.S.C. §9622(g)(5), alleged potential liabilities of the remaining potentially responsible parties in connection with the Site.

II. PARTIES BOUND

This Order applies to and is binding upon EPA, and upon Respondent and Respondent's receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondents' responsibilities under this Order.

Respondent shall ensure that its contractors, subcontractors, and representatives comply with this Order. Respondent shall be responsible for any noncompliance by Respondent, its contractors, subcontractors, and representatives with this Order.

III. FINDINGS OF FACT

Based on available information, including the Administrative Record in this matter, EPA hereby finds that:

1. The Lake Salvage Site is located in a mixed residential and industrial area of Chicago, Illinois. Lake Street forms the Site's northern border. A Chicago Transit Authority elevated train runs east-west above Lake Street. An auto salvage yard is located to the east of the Site; another is located to the west. An alley, a two-story apartment complex, and a vacant lot are located south of the Site.

2. The Site is surrounded by a wooden fence, however, the fence is in disrepair. The topography of the Site is flat, and the Site is concrete covered. There is one building on-site in the north-central area. It appears to have been used as an office. The building acts as the divider between the east and west portions of the Site. The west portion of the Site is partially roofed. The east portion of the Site contains a loading dock.

3. Lake Salvage is an abandoned scrap metal yard and wire reclamation facility owned by Alex Simkin, Edward Simkin and Irwin Simkin. Lake Salvage existed on the property since the 1950s. The Simkins owned and operated the facility since the company's beginning, but did not own the property until December 30, 1983,

when it was purchased from Mary Walker Hayes.

4. Lake Salvage Company began operating as a scrap metal yard in the 1950s. The operations consisted of the purchase, separation, and resale of various grades of scrap metal. The Illinois Environmental Protection Agency ("IEPA") granted Lake Salvage an operating permit for a RCF 8001 incinerator on August 11, 1976. The incinerator was used to burn the insulation on cables and wires for the recovery of copper-bearing scrap. The incinerator operated until September of 1986 when Lake Salvage closed. At that time the incinerator was partially dismantled.

5. On April 15, 1987, IEPA collected ash samples from the Site as part of an IEPA-commissioned incinerator study. Analysis results of the samples indicated that elevated levels of 2,3,7,8-tetrachlorodibenzodioxin (2,3,7,8-TCDD) and its isomers were present at the Site. In July 1987, IEPA officially withdrew Lake Salvage Company's operating permit for the incinerator.

6. On July 11, 1990, U.S. EPA's Field Investigation Team ("FIT") was tasked to conduct a preliminary assessment at the Site. The wooden fence was in disrepair. The west courtyard contained an uncovered tank and approximately 20 empty drums. The east courtyard contained scrap wood, scattered debris and approximately 70 uncovered drums. Some of these drums were filled with what appeared to be incinerator ash. Scattered drums including lumber were observed in both courtyards. A small concrete-covered trench was located immediately west of the scrap wood pile. FIT observed soil and incinerator ash in the trench. Two inoperable incinerators were located approximately 50 feet east of the western site boundary, and five feet north of the southern boundary.

7. Seven soil samples were collected. The samples were analyzed for (among other things) U.S. EPA Target Compound List ("TCL") compounds, Target Analyte List ("TAL") analytes, Polychlorinated biphenyls ("PCBs"), and dioxins. (Throughout this Order, references to "dioxin" or "dioxins" shall include dioxin and its isomers.) PCBs, dioxins and other constituents were detected in on-site surface soil samples, including Aroclor 1248 at 4,400 parts per billion (ppb), Aroclor 1254 at 5,200 ppb, cobalt at 150 parts per million (ppm), and 2,3,7,8-TCDD at 158.5 parts per trillion (ppt). It was also observed that incinerator ash was present on-site in uncovered drums.

8. In March 1994, the EPA's On-Scene Coordinator ("OSC") and Technical Assistance Team ("TAT") conducted a site assessment. The site was partially fenced and in disrepair. Site access was not completely restricted in several areas of the site. Evidence of trespassing including vandalism, graffiti, bottles, rubbish and tires were found throughout the site. All of the drums previously noted were found uncovered in the east storage yard. Many of the drums were tipped over and ash was scattered throughout the east

storage yard. Two inoperable incinerators were found to be in very poor condition. A car seat was found inside the open west incinerator. The on-site cinder block building was in poor condition with signs of forced entry. Several partially burned capacitors were found scattered throughout the east storage yard and mixed with the drummed ash.

9. Ash samples were obtained from the west incinerator, one of the drums, and an ash pile located within the building. A sample of fire brick was obtained from both incinerators. Wipe samples were obtained from the inside and outside of the cinder block building near the incinerators. Preliminary results confirmed elevated levels of dioxin and furans in the ash. Ash from the west incinerator and a drum had TES of 25 ppb and 1.9 ppb respectively.

10. Because access is not completely restricted and the ash was susceptible to windblown migration, immediate action was necessary to minimize potential exposure to contaminated ash. On April 19, 1994 the EPA mobilized to the site to perform an emergency removal action. By April 23, 1994, the EPA had consolidated ash from the east storage yard and from the open west incinerator and bulk bagged the ash into a roll-off box. The fence and building access points were reinforced.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting these removal actions, EPA has determined that:

1. The Lake Salvage Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
2. Dioxin, PCBs and lead are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
3. The Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
4. Respondent Litton Systems, Inc. is a person who arranged for disposal or transport for disposal of hazardous substances at the Lake Salvage Site. The Respondent therefore may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).
6. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set

forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 CFR § 300.415(b)(2). These factors include, but are not limited to, the following:

a. actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants;

This factor is present at the Site due to the existence of elevated levels of dioxin/furans in ash and soils at the site. Site access is not completely restricted and difficult to secure making exposure to hazardous substances possible. Off-site migration via unsecured windblown ash/soils is also possible.

Preliminary results confirmed elevated levels of dioxin and furans in the ash. Ash from the west incinerator and a drum had TEFs of 25 ppb and 1.9 ppb respectively.

b. hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release;

This factor is present at the Site due to the existence of a roll-off box and the east incinerator containing contaminated ash and soils. Since the site is not fully secured, the roll-off box and the east incinerator could be vandalized resulting in the release of hazardous substances.

c. weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released;

This factor is present at the Site due to the possibility of residual ash and soils becoming airborne and migrating off-site.

7. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

8. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP or CERCLA.

V. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, it is hereby ordered and agreed that Respondent shall comply with the following provisions, including but not limited to all documents attached to or incorporated into this

Order, and perform the following actions:

1. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

Respondent shall perform the removal actions required by this Order itself or retain a contractor to implement the removal actions. Respondent shall notify EPA of Respondents' qualifications or the name and qualifications of such contractor, whichever is applicable, within 10 business days of the effective date of this Order. Respondent shall also notify EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Order at least 5 business days prior to commencement of such work. EPA retains the right to disapprove of the Respondent or any of the contractors and/or subcontractors retained by the Respondent. If EPA disapproves a selected contractor, Respondent shall retain a different contractor within 10 business days following EPA's disapproval and shall notify EPA of that contractor's name and qualifications within 10 business days of EPA's disapproval.

Within 5 business days after the effective date of this Order, the Respondent shall designate a Project Coordinator who shall be responsible for administration of all the Respondents' actions required by the Order. Respondent shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present on site or readily available during site work. EPA retains the right to disapprove of any Project Coordinator named by the Respondent. If EPA disapproves a selected Project Coordinator, Respondent shall retain a different Project Coordinator within 10 business days following EPA's disapproval and shall notify EPA of that person's name and qualifications within 10 business days of EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

The EPA has designated Fred Bartman of the Emergency Response Branch, Region 5, as its On-Scene Coordinator (OSC). Respondent shall direct all submissions required by this Order to the OSC at 77 West Jackson Boulevard, HSE-5J, Chicago, Illinois 60604, by certified or express mail. Respondent shall also send a copy of all submissions to Thomas Krueger, Assistant Regional Counsel, 77 West Jackson Blvd., CS-3T, Chicago, Illinois, 60604-3590. The Respondent are encouraged to make their submissions to EPA on recycled paper (which includes significant postconsumer waste paper content where possible) and using two-sided copies.

EPA and Respondent shall have the right, subject to the immediately preceding paragraph, to change their designated OSC or Project Coordinator. EPA shall notify the Respondent, and Respondent shall notify EPA, as early as possible before such a change is made, but

in no case less than 24 hours before such a change. The initial notification may be made orally but it shall be promptly followed by a written notice.

2. Work to Be Performed

Respondent shall perform, at a minimum, the following removal actions:

Phase I: Disposal of approximately 22 cubic yards of incinerator ash and other dioxin-contaminated material contained in a roll-off container at the site.

Phase II:

Submit a Work Plan to:

1. Assess the nature and extent of contamination of the incinerators and building and determine whether the most feasible option for the building is remediation or demolition and removal.

2. Detail how remediation or removal of incinerators and impacted portions of the building will be accomplished

3. Evaluate the results of sampling and propose acceptable cleanup levels for lead in the buildings that will remain on site. The building surfaces will be decontaminated to the following cleanup levels for dioxins and PCB, or otherwise shall be appropriately disposed of:

	<u>Without encapsulation</u>	<u>With Encapsulation</u>
Dioxins	2.67 pg/cm ²	26.7 pg/cm ²
PCBs	10 ug/100 cm ²	100 ug/100 cm ²

4. Provide for the proper disposal of on-site impacted residual ash, soil and other material, including demolition debris.

5. Provide for the implementation of a surface soil sampling program to investigate the nature and extent of off-site contamination which may be related to the Site. That program shall include surface soil sampling to be collected from a 50 foot by 50 foot grid in the alleyway(s) adjacent to the Site and on the vacant property to the west and south of the Site. A maximum of 36 samples will be collected during the initial sampling event. All collected samples are to be analyzed for lead and PCBs. Twenty-five percent of collected samples shall be analyzed for dioxins. The Work Plan shall also provide that this off-site sampling program may later be expanded by mutual agreement; and

6. Submit a timeline for completion for all activities.

2.1 Work Plan and Implementation

Within 10 business days after the effective date of this Order, the Respondent shall submit to EPA for approval a draft disposal plan for performing Phase I disposal activities. The draft disposal plan shall provide a description of, and an expeditious schedule for, the Phase I actions required by this Order.

Within 20 business days after the completion of the Phase I disposal activities, the Respondent shall submit to EPA for approval a draft work plan for performing Phase II activities. The draft Work Plan shall provide a description of, and an expeditious schedule for, the Phase II actions required by this Order.

EPA may approve, disapprove, require revisions to, or modify either of the Plans. If EPA requires revisions, Respondent shall submit a revised draft Plan within 15 business days of receipt of EPA's notification of required revisions. Respondent shall implement the Plans as finally approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Plans, the schedules, and any subsequent modifications shall be fully enforceable under this Order. Respondent shall notify EPA at least 48 hours prior to performing any on-site work pursuant to the EPA approved plans.

Respondent shall not commence or undertake any removal actions at the Site without prior EPA approval.

2.2 Health and Safety Plan

Within 10 business days after the effective date of this Order, the Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall comply with applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 CFR Part 1910. If EPA determines it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA, and implement the plan during the pendency of the removal action.

2.3 Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with EPA guidance.

Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for quality assurance monitoring.

Respondent shall provide to EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondent shall also ensure provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent or its contractors or agents while performing work under this Order. Respondent shall notify EPA not less than 3 business days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

2.4 Post-Removal Site Control

In accordance with the Work Plan schedule, or as otherwise directed by the OSC, Respondent shall investigate what post-removal site controls, consistent with Section 300.415(k) of the NCP, 40 CFR § 300.415(k), and OSWER Directive 9360.2-02, may be practicable at the site. Upon completion of that investigation, Respondent shall submit a report that identifies all practicable post-removal site controls.

2.5 Reporting

Respondent shall submit a monthly written progress report to EPA concerning actions undertaken pursuant to this Order, beginning 30 calendar days after the date of EPA's approval of the Phase I Work Plan, until termination of this Order, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

2.5 Final Report

Within 60 calendar days after completion of all removal actions required under this Order, the Respondent shall submit for EPA review a final report summarizing the actions taken to comply with this Order. The final report shall conform to the requirements set forth in Section 300.165 of the NCP, 40 CFR § 300.165. The final report shall also include a good faith estimate of total costs incurred in complying with the Order, a listing of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling

and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits).

The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

3. Access to Property and Information

Respondent shall provide or obtain access to the Site and off-site areas to which access is necessary to implement this Order, and shall provide access to all records and documentation related to the conditions at the Site and the actions conducted pursuant to this Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and State of Illinois representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct actions which EPA determines to be necessary. Respondent shall submit to EPA, upon request, the results of all sampling or tests and all other data generated by Respondent or its contractor, or on the Respondents' behalf during implementation of this Order.

Where work under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 14 calendar days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondent shall immediately notify EPA if, after using its best efforts, it is unable to obtain such agreements. Respondent shall describe in writing its efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorneys fees incurred by the United States in obtaining such access.

4. Record Retention, Documentation, Availability of Information

Respondent shall preserve all documents and information relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for six years following completion of the removal actions required by this Order. At the end of this six year period and at least 60 days before any document or information is destroyed, Respondent shall notify EPA that such documents and information are available to EPA for

inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the six year period at the written request of EPA.

5. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, with the EPA Revised Off-Site Rule, 40 CFR Section 300.440, 58 Fed. Reg. 49215 (Sept. 22, 1993).

6. Compliance With Other Laws

Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA Section 121(e), 42 U.S.C. § 9621(e), and 40 CFR § 300.415(i). In accordance with 40 CFR § 300.415(i), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws.

7. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the activities conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondent shall immediately take all appropriate action to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region V at (312) 353-2318, of the incident or Site conditions. If Respondent fail to respond, EPA may respond to the release or endangerment and reserve the right to recover costs associated with that response.

Respondent shall submit a written report to EPA within 7 business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. Respondent shall also comply with any other notification requirements, including those in CERCLA Section 103, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11004.

VI. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

The OSC shall be responsible for overseeing the implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by EPA or Respondent at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

VII. REIMBURSEMENT OF COSTS

Respondent shall pay all oversight costs of the United States related to the Site that are not inconsistent with the NCP. EPA will send Respondent a bill for "oversight costs" on an annual basis. EPA's bill will consist of an Itemized Cost Summary. "Oversight costs" are all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this AOC.

Respondent shall, within 30 calendar days of receipt of a bill, remit a cashier's or certified check for the amount of the bill made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency
Superfund Accounting
P.O. Box 70753
Chicago, Illinois 60673

Respondent shall simultaneously transmit a copy of the check to the Director, Waste Management Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs - Lake Salvage Site" and shall reference the payors' name and address, the EPA site identification number CU and the docket number of this Order.

In the event that any payment is not made within the deadlines described above, Respondent shall pay interest on the unpaid balance. Interest is established at the rate specified in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The interest shall begin to accrue on the date of the Respondent's receipt of the bill (or for past response costs, on the effective date of this Order). Interest shall accrue at the rate specified through the date of the payment. Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section.

Respondents may dispute all or part of a bill for Oversight Costs submitted under this Order, if Respondent alleges that EPA has made

an accounting error, or if Respondent alleges that a cost item is inconsistent with the NCP.

If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs into the Hazardous Substance Fund as specified above on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the OSC. Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 20 calendar days after the dispute is resolved.

VIII. DISPUTE RESOLUTION

The parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order.

If the Respondent objects to any EPA action taken pursuant to this Order, including billings for response costs, the Respondent shall notify EPA in writing of its objections within 10 calendar days of such action, unless the objections have been informally resolved. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondents' position, and all supporting documentation on which such party relies. EPA shall submit its Statement of Position, including supporting documentation, no later than 10 calendar days after receipt of the written notice of dispute. In the event that these 10-day time periods for exchange of written documents may cause a delay in the work, they shall be shortened upon, and in accordance with, notice by EPA. The time periods for exchange of written documents relating to disputes over billings for response costs may be extended at the sole discretion of EPA.

An administrative record of any dispute under this Section shall be maintained by EPA. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to the preceding paragraph. Upon review of the administrative record, the Director of the Waste Management Division, EPA Region 5, shall resolve the dispute consistent with the NCP and the terms of this Order.

Respondents' obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

IX. FORCE MAJEURE

Respondent agrees to perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite Respondents' best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work or increased cost of performance.

Respondent shall notify EPA orally within 24 hours after Respondent becomes aware of any event that Respondent contends constitute a force majeure, and in writing within 7 calendar days after the event. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondent shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this Section shall be grounds for EPA to deny Respondent an extension of time for performance. Respondent shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay.

If EPA determines a delay in performance of a requirement under this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter Respondents' obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure.

X. STIPULATED AND STATUTORY PENALTIES

For each day, or portion thereof, that Respondent fails to fully perform any requirement of this Order in accordance with the schedule established pursuant to this Order, Respondent shall be liable as follows:

<u>Deliverable</u>	<u>Penalty Per Day</u>
Failure to submit a Phase I disposal plan.	\$1000.00
Failure to submit revisions to the Phase I disposal plan.	\$1000.00

Failure to meet scheduled dates in the Phase I disposal plan.	\$1000.00
Failure to submit a Phase II Work Plan.	\$1000.00
Failure to submit revisions to the Phase II Work Plan.	\$1000.00
Failure to meet scheduled dates in the Work Plan.	\$1000.00

Upon receipt of written demand by EPA, Respondent shall make payment to EPA within 20 days and interest shall accrue on late payments in accordance with Section VII of this Order (Reimbursement of Costs).

Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether EPA has notified Respondent of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondents' obligation to complete the performance of the work required under this Order. Stipulated penalties shall accrue, but need not be paid, during any dispute resolution period concerning the particular penalties at issue. If Respondent prevails upon resolution, Respondent shall pay only such penalties as the resolution requires.

Violation of any provision of this Order may subject Respondent to civil penalties of up to twenty-five thousand dollars (\$25,000) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

XI. RESERVATION OF RIGHTS

Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order. EPA also reserves the right to take any other legal or equitable action as

it deems appropriate and necessary, or to require the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

XII. OTHER CLAIMS

By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be a party or be held out as a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Order.

Except as expressly provided in Section XIII (Covenant Not To Sue), nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a).

This Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). The Respondent waives any claim to payment under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612, against the United States or the Hazardous Substance Superfund arising out of any action performed under this Order.

No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XIII. COVENANT NOT TO SUE

Except as otherwise specifically provided in this Order, upon issuance of the EPA notice referred to in Section XVII (Notice of Completion), EPA covenants not to sue Respondent for judicial imposition of damages or civil penalties or to take administrative action against Respondent for any failure to perform removal actions agreed to in this Order except as otherwise reserved herein.

Except as otherwise specifically provided in this Order, in consideration and upon Respondents' payment of the response costs specified in Section VIII of this Order, EPA covenants not to sue or to take administrative action against Respondent under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for recovery of response costs incurred by the United States in connection with overseeing the work performed under this Order. This covenant not to sue

shall take effect upon the receipt by EPA of the payments required by Section VIII (Reimbursement of Costs).

These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Order. These covenants not to sue extend only to the Respondent and do not extend to any other person.

XIV. CONTRIBUTION PROTECTION

With regard to claims for contribution against Respondent for matters addressed in this Order, the Parties hereto agree that the Respondent is entitled to protection from contribution actions or claims to the extent provided by Section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4).

Nothing in this Order precludes Parties from asserting any claims, causes of action or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery. Nothing in this Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Order. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Order may have under applicable law.

The Parties each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

XV. INDEMNIFICATION

Respondent agrees to indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (A) arising from, or on account of, acts or omissions of Respondent and Respondents' officers, heirs, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Order; and (B) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent, and any persons for performance of work on or relating to the Site, including claims on account of construction delays. Nothing in this Order, however, requires indemnification by Respondent for any claim or cause of action against the United States based on negligent action taken solely and directly by EPA (not including oversight or approval of plans or activities of the Respondent).

XVI. MODIFICATIONS

Modifications to any plan or schedule may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within 7 business days; however, the effective date of the modification shall be the date of the OSC's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the parties.

If Respondent seeks permission to deviate from any approved plan or schedule, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve Respondent of its obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XVII. NOTICE OF COMPLETION

When EPA determines, after EPA's review of the Final Report, that all work has been fully performed in accordance with this Order, except for certain continuing obligations required by this Order (e.g., record retention, payment of costs), EPA will provide notice to the Respondent. If EPA determines that any removal activities have not been completed in accordance with this Order, EPA will notify the Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate to correct such deficiencies. The Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure to implement the approved modified Work Plan shall be a violation of this Order.

XVIII. SEVERABILITY

If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XIX. EFFECTIVE DATE

This Order shall be effective upon signature by the Director, Waste Management Division, EPA Region 5, and receipt of the signed Order by Respondent.

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this 21st day of September, 1994.

By Theodore F. Chav

IT IS SO ORDERED AND AGREED

BY:

W. E. Muno
William E. Muno, Director
Waste Management Division
United States
Environmental Protection Agency
Region 5

DATE:

9/29/94